IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal No.541 of 2003
and
W.A.M.P. No.690 of 2003

A. Thangapalam … Appellant/Petitioner

Vs.

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-9.

2. The Special Tahsildar
(Neighbourhood Scheme) and
Land Acquisition Officer,
Nagercoil, Kanyakumari District. … Respondents/Respondents

Appeal against the order of the learned single Judge, dated 05.04.2002, made in W.P. No.19439 of 1994. WP NO. 19439/94 presented under Article 226 of the Constitution of India to call for the records relating to the proceedings of the 1st respondent in G.O. Ms. No. 1210 Housing and Urban Development Department dated 17/09/91 by issue of writ of certiorari or any other appropriate writ order of direction in the nature of writ and quash the same in so far as the same relates to the petitioners land are concerned

For Appellant : Mr.A.Sivaji
For Respondents : Mr.M.Dhandapani,
Addl. Government Pleader.

WEB COPY

J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above Writ Appeal is filed against the order of the learned single Judge, dated 05.04.2002, made in W.P. No.19439 of 1994, in and by which, the learned Judge

https://hcservices.ecourts.gov.in/hcservices/

dismissed the said petition on the ground of of laches.

2. Aggrieved by the acquisition proceedings initiated by the Housing and Urban Development Department, the appellant approached this Court by way of W.P. No.19439 of 1994. In the said Writ Petition, the petitioner raised several contentions including the one that enquiry under Section-5A of the Land Acquisition Act was not conducted as per Rules. It was also contended that the Newspapers in which publication was effected have no circulation in that area. Apart from the above legal contentions, the petitioner also raised other contentions, pointing out certain Government Orders, which prohibit acquisition of certain lands for the purpose ascribed by the Housing Department. The respondents filed a counter affidavit, highlighting their stand. The learned Judge, after finding that Section-5A enquiry and Section-6 declaration were of the year 1992, and that the Writ Petition was filed only in November, 1994, refused to accept the contentions raised by the petitioner and dismissed the writ petition.

3. In the case on hand, the purpose of the acquisition is for formation of neighbourhood scheme at the instance of the Tamil Nadu Housing Board. Notification under Section 4(1) was published in the Tamil Nadu Government Gazette on 30.10.1991. The same was published in the local Dailies, viz., "Nam Nadu" & "Madurai Mani", on 20.11.1991 and the gist of notification was published in the locality on 21.11.1991. Form-3a Notice was served on the petitioner on 05.01.1992 and the petitioner submitted his objections on 20.01.1992. Section 5-A enquiry was held on 23.1.1992 and the remarks of the requisitioning body was received by the Land Acquisition Officer on 25.2.1992. Section-6 Declaration was published in the Government Gazette on 18.11.1992; in the local Dailies, viz., Dhina Thoodu" and "Makkal Kural", on 19.11.1992; and local publication was effected on 20.11.1992. According to the learned counsel, before passing of the Award, the appellant/petitioner approached this Court and filed the Writ Petition questioning the entire acquisition proceedings.

4. The information furnished in the counter affidavit shows that the Award enquiry was conducted on 18.10.1994 and 19.10.1994 and final award was passed on 18.11.1994. It is true that the Writ Petitioner obtained stay of all further proceedings on 16.12.1994. It is not the case of the Department that after passing of the Award, the petitioner kept quite or slept over the matter. Normally, this Court will not entertain a Writ Petition, challenging

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Notification under Section 4(1) of the Land Acquisition Act on the ground that it is only administrative in nature. It is not in dispute that the petitioner submitted his objection within the prescribed time and also participated in the 5-A enquiry on 23.1.1992. It is further seen that the remarks of the requisitioning body, viz, Tamil Nadu Housing Board, was forwarded to the Land Acquisition Officer only on 25.2.1992, that is, nearly after a months' time from the date of the 5-A enquiry. Though this objection was raised in the affidavit, giving all the details, the same was not considered by the learned Judge. Likewise, the other objection of the petitioner was that through all the three modes, notice was not properly effected. In other words, according to the learned counsel, publication in the Government Gazette, local Dailies and locality being mandatory, failure to fulfil the above provision/condition would vitiate the acquisitions proceedings. It is specifically stated in the affidavit that the Dailies in which publication was made, viz., 'Nam Nadu', 'Madurai Mani', 'Dhina Thoothu' and 'Makkal Kural', have no circulation in the locality where the land situates. According to him, this objection, though specifically raised, was not considered and the learned Judge dismissed the Writ Petition only on the ground of laches.

5. Mr.Sivaji, learned counsel appearing for the appellant/writ petitioner has brought to our notice the very same Government Order challenged by other neighbouring land owners by way of separate writ petitions. In W.P. Nos.20310 and 20311 of 1994, one of us (PSJ), after accepting the above mentioned contentions, particularly violation of Rule 3(b) of the Rules, and also finding that the Dailies in which publication was made, viz., 'Kumari Murasu', 'Namadhu M.G.R.' and 'Madurai Mani', have no circulation in the locality in which the land in question situates, quashed the acquisition proceedings. It is also not in dispute that the Government have accepted the said decision and no appeal has been filed till this date. In view of the fact that the land in question is also the subject matter of the very same Government Order, we are of the view that the earlier order dated 13.09.2001, made in W.P. Nos.20310 and 20311 of 1994, is applicable to the petitioner in W.P. No.19439 of 1994. The learned Judge has not considered all these legal submissions and procedural violations.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. In the light of what is stated above, the order dated 05.04.2002, made in W.P. No.19439 of 1994, is set aside and the impugned acquisition proceedings are quashed. It is made clear, if the respondents want to pursue the acquisition proceedings, they are free to initiate the same afresh in accordance with law.

7. With the above observation, the Writ Appeal is allowed. No costs. Connected Miscellaneous Petition is closed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-9.

2. The Special Tahsildar
(Neighbourhood Scheme) and
Land Acquisition Officer,
Nagercoil, Kanyakumari District.

+ one cc to Mr. A. Sivaji Advocate srn o. 25316
+ one cc to the Government Pleader sr no. 25131

NM(26.06.2006)

W.A. No.541 of 2003 &
Connected W.A.M.P.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/